Cri 1280/97

32

APPEAL PRISONER

S.T. No 325/95 (2)

No. 592 Name अड़कमी देवा

Father's Name भीमा Resident ग्राम - गुफड़ी
थाना - गादीरास जिला. म.प्र.

Age 32 वर्ष Sentenced to आजीवन कारावास on 4.12.96

Under Section 302 भा.द.वि. by प्रथम अति. सत्र न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

Date of application for copy of Judgement :- No.

2. Date of which copy received :- 4.12.96

3. Date on which appeal sent :- 21 12.96

4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 592 Name अड़कमी देवा प. भीमा

Continued in जिला Jail जगदलपुर

No. 514 आदेशीका / Dated 21 12.96

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल एवम् उपजेल
जगदलपुर

Su perintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 1 (29) dated 6.1.97

Forwaided to the माननीय जिला एवं सत्र न्यायाधीश महोदय जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

(23)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.1279/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANTS
1. Sodi Ganga, S/o Hidma Muriya
   Age – 21 years.
2. Kurami Deva, S/o Joga Muriya
   Age – 50 years
   Both residents of Pordem Thana, Gadiras (District Bastar)
3. Madkami Deva, S/o Bhima Muriya
   Age – 32 years, R/o Gufadi, Dokapara, Thana – Gadiras, (District Bastar) M.P.

Versus

RESPONDENT — State of Madhya Pradesh, through Police Station Gadiras (District Bastar)M.P.

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

14-3-2007

Shri R.K. Jain, Advocate for the appellant.

Shri Ashish Shukla, Govt. Advocate for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J.

Criminal Appeal No.1279/1997 filed by accused/appellant Kurami Deva, Criminal Appeal No.1280/1997 filed by accused/appellant Madkami Deva and Criminal Appeal No.1281/1997 filed by accused/appellant Sodi Ganga are being disposed of by this common judgment as all the three appeals arise out of impugned judgment dated 4th December 1996.

The accused/appellants have preferred these appeals questioning the legality and correctness of the judgment of conviction and order of sentence dated 4th December 1996 passed by the 1st Additional Sessions Judge, Jagdalpur,

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

District Bastar, in Sessions Trial No. 325/95 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302/34 of the IPC, sentenced each of the accused/appellants to undergo imprisonment for life.

Case of the prosecution, in brief, is that Kohrami Hunga (PW-1), son of Kohrami Nanda gave merg intimation (Ex.P/2) in the Police Station Gadiras on 16.6.1995 at about 6.30 a.m. to the effect that yesterday night after taking dinner he along with mother and father were sleeping in the courtyard of their house. At about 11.30 p.m. Sodi Ganga, Kurami Deva, Madkami Deva came together and Sodi Ganga shot an arrow with a bow, which hit on the stomach of his father and thereafter, they ran away. He along with his mother identified those persons who were running away and within 5 to 10 minutes his father succumbed to the injuries sustained by him. Receiving this report S.H.O. Police Station Gadiras registered the F.I.R. (Ex.P/1) for the offence under Section 302/34 of the I.P.C., left for the scene of occurrence and after giving notice (Ex.P/3) to the Panchas, prepared the inquest at Ex.P/5. Body of deceased Kurami Nanda was sent for postmortem examination to Primary Health Center, Gadiras under Ex.P/6 where Dr. Akhileshwar Uraon (PW-4) conducted postmortem and prepared the postmortem report (Ex.P/11) in which he opined that cause of death was as a result of shock, haemorrhage and cardiac failure and the death was homicidal in nature. While in police custody, accused Sodi Ganga gave memorandum (Ex.P/7), pursuant to that a bow was taken into possession under Ex.P/8. An arrow was taken into possession under Ex.P/10. A vest of the deceased stained with blood was seized under Ex.P/9. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Sukma who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Prosecution in order to establish the charge against the accused persons examined five witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Mr. R.K. Jain, learned counsel for the accused/appellants argued that in this case the prosecution has produced two witnesses namely PW-1 Kuhrami Hunga, son of the deceased and PW-2 Kuhrami Pise, wife of the deceased, showing them eyewitnesses but from their evidence it is established that at the time of commission of the crime, they were sleeping and they woke up only after hearing the cries of deceased Nanda, therefore, they had not witnessed the accused persons committing the crime in question.

On the other hand, Mr. Ashish Shukla learned counsel appearing for the State supported the impugned judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant we have perused the evidence of PW-1 Kuhrami Hunga and PW-2 Kuhrami Pise as these are the only two witnesses on whose evidence the conviction of the accused persons has been based.

It is admitted fact that the offence was committed in the night at about 11.30 p.m. PW-1 Kuhrami Hunga, son of the deceased, has stated that he was

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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sleeping at other place, whereas his father was sleeping at another place. Kuhrami Deva, Mudkami Deva and Ganga came to his house in the night, as they had quarreled with his father in the evening and they shot his father with an arrow. In paragraph 4 of his cross-examination this witness has stated that when arrow was shot at his father he was sleeping in another room. It is incorrect to say that he has not seen the accused shooting arrow. He himself admitted that accused Ganga shot an arrow. In paragraph 5 of his cross-examination he has stated that there was a dispute between accused Ganga and his father regarding agricultural field. Accused Madkami Deva is of village Gumadi, the quarrel between his father and accused Ganga took place a week before the date of incident. He has further stated that it is correct to say that when the arrow was shot, they were sleeping and on hearing the screams of his father they woke up. It is also correct to say that after the arrow was shot they saw the accused persons from behind while they were running away. PW-2 Kuhrami Pise, wife of the deceased, has stated that arrow was shot by accused SodiGanga which hit on the stomach of her husband. In the cross-examination she has stated that she has not seen the accused shooting arrow but she saw the accused persons from behind from a distance of about 300 ft. while they were running. At the time of commission of the crime her husband was sleeping on the cot and she was sleeping on the ground.

Therefore, from the evidence of above two witnesses it is clear that deceased Kuhrami Nanda was sleeping on a cot, his wife PW-2 Kuhrami Pise was sleeping on the ground, his son PW-1 Kuhrami Hunga was sleeping in another room and they woke up only after hearing the cries raised by deceased Nanda on being shot by accused persons with arrow. These witnesses have categorically stated the incident occurred at the mid night, they saw the accused persons from behind when they were running away and PW-2 has stated that she saw the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused persons from a distance of 300 ft. when they were running away, therefore, it was difficult for them to identify the accused persons in the night, that too from behind when they were running away and these persons, in fact, have not witnessed the accused persons committing the crime in question. Only a bow was recovered at the instance of accused Sodi Ganga and in fact, the arrow was found pierced in the stomach of the deceased, therefore, there is no circumstantial evidence also to connect the accused persons with the crime in question, as such the accused/appellants can not be held guilty only on the basis of weak evidence of above two witnesses. Therefore, the judgment of the trial Court cannot be sustained.

In the result, Criminal Appeal No.1279/1997 filed by accused/appellant Kurami Deva, Criminal Appeal No. 1280/1997 filed by accused/appellant Madkami Deva and Criminal Appeal No. 1281/1997 filed by accused/appellant Sodi Ganga, succeed, the same are allowed. Conviction and sentence imposed upon the accused/appellants are set aside and they are acquitted of the charge under Section 302/34 of the IPC. The accused persons are said to have been in detention since 19.6.1995, therefore, they be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.